

Meeting Minutes November 20, 2003

Town of Los Altos Hills City Council Regular Meeting

Thursday, November 20, 2003, 6:00 P.M.
Council Chambers, 26379 Fremont Road

1. CALL TO ORDER, ROLL CALL, AND PLEDGE OF ALLEGIANCE

Mayor Cheng called the Regular Meeting of the City Council to order at 6:00 p.m. in the Council Chambers at Town Hall.

Present: Mayor Emily Cheng, Mayor Pro Tem Mike O'Malley, Councilmember Bob Fenwick, Councilmember Breene Kerr and Councilmember Dean Warshawsky

Absent: None

Staff: City Manager Maureen Cassingham, City Attorney Steve Mattas, Assistant Attorney Alix Rosenthal, Planning Director Carl Cahill, Associate Planner Debbie Pedro, City Engineer/Director of Public Works Mintze Cheng, Administrative Services Director Sarah Joiner and City Clerk Karen Jost

Press: Kaye Ross, San Jose Mercury News and Tim Seyfert, Los Altos Town Crier

MOTION SECONDED AND CARRIED: Moved by O'Malley, seconded by Warshawsky and passed unanimously to limit the length of time for public comments to three minutes.

2. APPOINTMENTS AND PRESENTATIONS

Mayor Cheng explained that this would be City Engineer/Director of Public Works Mintze Cheng's final City Council meeting. She thanked her for her three years of outstanding service. The Council concurred and wished Cheng well in her new endeavors.

3. PLANNING COMMISSION REPORT

Carl Cahill reported that the Planning Commission had met on November 13, 2003. Their actions included: the approval of a landscape screening plan and rededication of a storm drain easement, Lands of Teng; the approval of a variance request to legalize a pool and hardscape improvements to encroach into setback lines, Lands of Lo; and the Commissioners reviewed a proposed fence ordinance and directed staff to revise the ordinance to include more pictures and diagrams similar to the Woodside fence ordinance.

4. CONSENT CALENDAR

Items Removed: Item 4.5 (Kerr)

MOTION SECONDED AND CARRIED: Moved by O'Malley, seconded by Warshawsky and passed unanimously, to approve the remainder of the consent calendar, specifically;

- 4.1 Approval of Minutes: Regular City Council Meeting November 6, 2003
- 4.2 Review of Disbursements: 10/29/2003 – 11/10/2003 \$311,884.32
- 4.3 Acceptance of Dedication of Right-of-Way; Lands of Wang, 25617 Elena Road Reso #84-03
- 4.4 Acceptance of Dedication of Right-of-Way; Lands of Blech, 25551 Burke Lane Reso #85-03

Item Removed:

- 4.5 Acceptance of Work Street Rehabilitation Project Fiscal Year 2002-2003 Reso #86-03

Councilmember Kerr requested clarification of this item.

City Engineer Cheng explained that the City Council had approved this project in June 2003 and at the same time, approved a contingency of \$90,000 and a contract with James Boyle to provide construction inspection services. Due to the additional base failure and dig out work added to the project at various locations, the net increase reflected in the total cost is \$86,007.03. All change orders are attached to the staff report. Cheng noted that the contractors bid had been quite favorable to the Engineer's original estimates of the project. This had allowed for the additional work to be scheduled.

MOTION SECONDED AND CARRIED: Moved by Kerr, seconded by Fenwick and passed unanimously to adopt the resolution accepting the work of the "2003 Street Rehabilitation Project" authorizing final payment concerning such work, and directing the City Clerk to file the Notice of Completion.

5. UNFINISHED BUSINESS

5.1 Update on Mayor's Goals

5.1.1 New Town Hall – Status Report

Councilmember Kerr reported that since the last Special City Council Meeting of November 17, 2003, Architect Peter Duxbury has been working on the "Savings by Design" energy program for the new facility. Duxbury has requested additional input on the City Council Chambers interior schematic. Kerr concluded that the Architect reported "all is going well".

5.1.2 Undergrounding of Utilities – Status Report

Councilmember Warshawsky reported that the RW Beck site visit was complete. Their report is expected in mid-December. Consideration of the Agreement with Godbe Research for a telephone survey of residents to assess the interest in undergrounding of utilities has been agendaized for the December 4, 2003 City Council Meeting.

5.1.3 Master Pathway Map – Status Report

Dot Schreiner, Saddle Mountain Drive, reported that the map group is continuing to meet every Friday for their research project.

Chris Vargas, Templeton Place, Pathways Committee Chair, reported that the Committee had met last week to establish the process for updating the path map. Vargas estimated that the process could take from 3-6 months. They had agreed on the following formula:

1) To establish a series of guidelines and policies that are drawn from the Circulation Element and Pathway Element of the Town's General Plan. These guidelines will remain consistent throughout the Town.

2) The map will be reviewed section by section. Each path will be evaluated to determine its value to the system. The goal is to make the network as a whole a "living unit".

3) Public Hearings will be held to gather input from the residents on the initial revised plan.

4) The proposed revised path map will be forwarded to the Planning Commission for their review with recommendations from the Pathway Committee.

Vargas explained that the Pathway Committee will not be removing path easements as a part of this update process. The Committee is in agreement that this is not their charter. They will focus on designing the pathway network.

5.1.4 Storm Water Master Plan – Status Report

City Engineer/Public Works Director Cheng reported that the contractor has been collecting data and the first technical memorandum is expected to be presented to Council in January, 2004.

5.1.5 Visit to China to Explore Business Opportunities –Postponed for Discussion in Spring 2004

5.2 Discussion of Mayoral Rotation Policy and Procedure

Due to the full agenda, consideration of this item was continued to the Regular City Council Meeting of December 4, 2003.

5.3 Discussion of Proposal to Grant Pathway Easement for Wildflower-Newbridge Connection

City Engineer Cheng directed Council to Exhibit A of her staff report, a diagram of the pathway connection to be considered. She explained that all easements for the connection route have been obtained by the Town. Recently, the Pathway Committee informed staff that the off-road easement between the Lands of Bariteau, 13769 Wildflower and Lands of Lyman, 13770 Wildflower Lane had been heavily planted with trees and shrubs and was not accessible for pathway usage. A planting violation letter was sent to the property owners and they were urged to work with the Pathways Committee for an alternate easement location on the adjacent driveway. Mr. Bariteau has stated that he had no objection to an easement over the existing driveway, but he has refused to pay for the survey and recordation costs. At their last meeting, Council directed staff to analyze remedies for this problem and if the proposed relocation was undertaken, investigate who would be responsible for the associated costs. Cheng noted that Town has consistently required property owners to abate any and all violations of the Town's pathway easement and since the alternate easement location will benefit the property owners, staff recommends that both neighbors share the cost of the easement relocation or they should abate the easement planting violation.

OPENED PUBLIC COMMENT:

Jack Bariteau, 13769 Wildflower Lane, addressed Council. He summarized the history of the development of his property. Bariteau has recently listed his home for sale and he believes this is the reason for the attention to the pathway easement on his property. He has agreed to extend the off-road easement and to grant the Town an additional 5 feet on his driveway but does not feel he should be obligated to share in the survey and legal costs for recordation with his neighbors the Lymans. Bariteau explained that he had built a retaining wall on his site to accommodate the pathway with the verbal approval of the former City Engineer. This had been constructed over a sewer easement and when there was a change in Town staff, he had been required to remove the retaining wall. Bariteau said he had spent approximately \$15,000. on this project and is unwilling to spend any more money. The landscaping that has been identified as the planting violation was done to mitigate/screen his home from his neighbor's view.

Council questioned why the retaining wall was built and if Mr. Bariteau had obtained any building permits. Bariteau explained that the wall was built to accommodate the pathway due to the slope of his property and the planting done by the Lymans. He had not gotten permits.

Chris Vargas, Pathways Committee Chair, explained that the easement in question is a key connector for the neighborhood pathways. He believes that there is no other suitable location for the easement and the driveway of the flag lot is the only option. The Pathways Committee is recommending that the easement on the driveway be widened and all related costs be paid from the Pathway funds.

Dot Schreiner, Saddle Mountain Drive, stated that the Path Map adopted in 1994 clearly shows the connection on Wildflower Lane. This path is used extensively. Landscape planting was subsequent to the '94 map. Historically, residents have been responsible for removing foliage placed on pathways.

CLOSED PUBLIC COMMENT

Mayor Pro Tem O'Malley offered that this was a unique situation. He is not adverse to the Town paying approximately \$3,000 in costs to acquire the increased pathway easement on the driveway and not have to build a pathway.

Councilmember Fenwick concurred.

Councilmember Warshawsky stated that this action by Council would not set a precedent. They are increasing the size of the existing easement and he is amenable to moving forward and the Town paying associated costs.

Councilmember Kerr agreed and was favorable to the recommendation of the Pathways Committee that costs could be paid from the Pathways budget.

MOTION SECONDED AND CARRIED: Moved by O'Malley, seconded by Kerr and passed by the following roll call vote to accept the increased pathway easement from Lands of Bariteau and for the Town to pay all normal associated costs.

AYES: Mayor Cheng, Mayor Pro Tem O'Malley, Councilmember Fenwick,
Councilmember Kerr and Councilmember Warshawsky
NOES: None
ABSENT: None
ABSTAIN: None

5.4 Acceptance of the Mora Drive Sewer Reimbursement Agreement

City Engineer Mintze Cheng addressed Council. She summarized the history of the project. Mora Drive is located in the unincorporated area within the Town's Sphere of Influence and Urban Service Area. At the December 7, 2000 City Council meeting, the Council entered into an Out-of-Agency Contract for Sewer Service with the Mora Drive Sewer Group (a total of twenty-nine property owners). This is an initiated sewer extension project in the County unincorporated area. The construction was commenced in 2001 and the Town issued a substantial completion notice on July 1, 2002. At this time the sanitary sewer line is considered privately owned, with tonight's action by the Council, the Town will formally accept the sewer line and assume the responsibility for maintenance. Additionally, there is a Sewer Reimbursement Agreement before Council for consideration.

City Attorney Mattas explained that Council had before them two versions of the Sewer Agreement: 1) the staff recommended Sewer Agreement, and 2) the modified Sewer Agreement that denotes the changes requested by the Mora Drive Sewer Project Group. Mattas added that staff does not recommend approval of the amended agreement. Reasons for this position are defined in the staff report. Mattas clarified that reimbursement agreements are solely for the benefit of the installers and the Town is under no obligation to enter into such an agreement.

OPENED PUBLIC HEARING

Hal Feeney, 11030 Mora Drive, expressed his appreciation for all the help the group has received over the course of the last 4.5 years that it has taken to bring the project to its conclusion. He agreed with City Attorney Mattas that from a reimbursable perspective the agreement favors the installers, however, the group finds issue with the liability exposure. At the direction of their Counsel, they are requesting that staff work with their attorney to resolve some language changes (“tightening of the language similar to the Ordinance”) to limit liability to all parties.

Mayor Pro Tem O’Malley summarized the requests of the “Installers” noting that they were asking for: 1) for an amendment to the hold harmless provisions, and 2) requesting that the Installers be notified prior to the Town’s entering into litigation with a user for nonpayment and given the right to veto such action because the Installers are liable for all legal costs. O’Malley noted that the second request seemed reasonable but that the Town would have issue with any additional changes to the standard sewer reimbursement agreement.

Feeney concurred with O’Malley on item 2, explaining that it was a simple business/economic decision. The Installers did not want to take legal action when the costs incurred could be more than the amount realized.

Enrique Klein, Mora Drive Sewer Project Group, thanked the Town for being so cooperative and helpful during this lengthy process. He reiterated the request for the language of the agreement to be “tightened equal to the ordinance”.

Chuck Bodine, 11055 Mora Drive, explained that the Installers are concerned that the present sewer agreement has a weakening of the language defining what the City would do to collect reimbursement. They are concerned that this would impact future users and potentially cause them not to pay the fees.

City Attorney Mattas explained that the wording of the ordinance anticipates that there will be a discussion and he would advise the Council not to undertake a mandatory obligation that could be a burden on the Council or future Councils. He added that any further proposed discussion with the group’s attorney would not change this position.

CLOSED PUBLIC HEARING

Mattas clarified that what Council may want to consider for approval would be the staff recommended agreement with the minor typographical correction in Section 8b, “criminal” should read “take appropriate enforcement action” and Section 8a would be modified to read as follows:

In the event of a dispute between any Future User and the Town with respect to the payment of the Usage Fee, the Town shall notify the Distribution Agents and may, at its option, and with the prior written consent of the Distribution Agents, take any appropriate civil action against such Future User to collect the Usage Fee; provided, however, Installers acknowledge that the Town is under no obligation to take any legal action whatsoever against such Future User to collect the Usage Fee. The

Town shall terminate any civil enforcement action at the request of the Installer's Distribution Agents.

Modifications to the "Mora Drive Sewer Project Distribution Agent Responsibilities" would include the addition under "Monthly" a subsection 3, which would read:

Pursuant to Section 8a of the Reimbursement Agreement, the Distribution Agents would receive notification from the Town of intended commencement of enforcement action and would either approve or deny the commencement of said action within 14 business days of receipt of the notice.

Pursuant to Section 8a of the Reimbursement Agreement, the Distribution Agents will provide direction to the Town to terminate any civil enforcement actions.

Enrique Klein, Hal Feeney and Charles Bodine, on behalf of the Mora Drive Sewer Group, agreed that these changes were fair and acceptable.

MOTION SECONDED AND CARRIED: Moved by O'Malley, seconded by Kerr and passed unanimously to adopt Resolution 87-03 accepting the sanitary sewer line on Mora Drive and approving and authorizing execution of a Sanitary Sewer Reimbursement Agreement between the Town of Los Altos Hills and the Mora Drive Sewer Project Group including the amendments to the Mora Drive Sewer Project Distribution Agent Responsibilities, as amended and delineated by the City Attorney and agreed to by the Installers.

6. NEW BUSINESS

6.1 Proposed Agreement for Animal Services Between the City of Palo Alto and Town of Los Altos Hills

City Manager Cassingham addressed Council. Council had before them a proposed new agreement with the City of Palo Alto to provide the Town with animal control and sheltering services. The Town began contracting with the City of Palo Alto for such services in 1993. Mid-year, Council approved a bridge agreement to allow the Town and the other partners to negotiate a long-term contract (10 years with two 5 year options). The agreement commences January 1, 2004. The costs for services appear in this year's budget as approximately \$63,000 with offsetting fees from licensing and sheltering charges in excess of \$7,000. Cassingham noted that the other participating agencies City Councils have agreed to the proposed agreement with the inclusion of the capital improvement expansion project for the facilities. Staff is recommending approval of the agreement, adding that the Town has not received any citizen complaints and the City of Palo Alto has provided nearly a decade of effective and efficient animal control and sheltering services to Los Altos Hills.

MOTION SECONDED AND CARRIED: Moved by O'Malley, seconded by Warshawsky and passed unanimously to adopt Resolution #88-03 authorizing an Agreement with the City of Palo Alto for Animal Care Services.

6.2 Discussion of Proposed Conservation Easement Ordinance

Planning Director Carl Cahill explained that Council had before them a report from the Open Space Committee that outlines their recommendations for an open space conservation easement definition. The Committee wanted to advise Council of their work and solicit comments on their proposal before it is directed to the Planning Commission for the appropriate review.

Councilmember Fenwick asked Cahill if there is much support for conservation easements being placed on properties with a slope between 30-50%. Cahill said there is support in the General Plan. Fenwick noted that there was no size minimum mentioned in the recommendations. He suggested that a minimum of $\frac{1}{4}$ acre would be appropriate. This could be from contiguous land. Cahill responded that this was a valid issue and a reasonable solution. He will share this with the Open Space Committee and Planning Commission.

Council discussion ensued. Mayor Cheng stated that the conservation definition language is very ambiguous in the General Plan. Former Councils have discussed this issue but no action has been taken.

Roger Spreen, Open Space Committee Member, explained that slope is not the only consideration that places land in a conservation easement. Additional conditions include: drainage swales, wildlife corridors and natural woodlands.

MOTION SECONDED AND CARRIED: Moved by O'Malley, seconded by Warshawsky and passed unanimously to direct the Planning Commission to do a Town-wide mailing to notice Public Hearings for the purpose of soliciting public input regarding the drafting of an open space ordinance.

6.3 Presentation of Financial Statements for the Year ended June 30, 2003

Administrative Services Director Sarah Joiner summarized her staff report for Council. Council had before them the draft of the Town's Financial Statements for the fiscal year ended June 30, 2003. Council had reviewed the draft report at their Special Meeting of November 17, 2003.

Joiner distributed the auditors management letters and comments that were received after the packet was distributed. Staff's responses were included in the handout. She noted that the auditor had expressed an unqualified opinion, indicating that the statements have been prepared in conformity with generally accepted accounting principles. Staff does intend to submit the CAFR (Comprehensive Annual Financial Report) to associations for consideration of awards for financial reporting. It will be forwarded to the California Society of Municipal Finance Officers and the Governmental Finance Officers Association.

Councilmember Kerr thanked Joiner for her presentation at the Special Meeting.

Mayor Pro Tem O'Malley explained that the management letters included very minor issues. From an accounting standpoint it is very positive to receive an unqualified opinion. He congratulated Sarah and Cindy Higby on a job well done.

MOTION SECONDED AND CARRIED: Moved by O'Malley, seconded by Kerr and passed unanimously to accept the Audit of the Financial Statements for the Year ended June 30, 2003.

6.4 Emergency Repair Work-Concrete V Ditch at Arastradero

City Engineer Mintze Cheng explained that Council had before them a request to authorize the City Manager to sign a contract agreement for a not-to-exceed amount of \$22,000 to effect emerging repairs of the concrete V-Ditch at Arastradero Road. The structure had been built by Cal Trans and accepted as an improvement by the Town. Deep voids were reported by the Town's maintenance crew under the existing concrete V-Ditch along the roadside. This condition is deemed unsafe due to the fact that hydraulic pressure can build and undermine the toe of the slope which could cause a landslide in the area. Cheng noted that the scope of the work is included in the agreement.

MOTION SECONDED AND CARRIED: Moved by O'Malley, seconded by Kerr and passed unanimously to adopt Resolution #89-03 awarding a contract for the concrete V-Ditch repair project at Arastradero Road.

7. REPORTS FROM COMMITTEES, SUB-COMMITTEES, AND COUNCILMEMBERS ON OUTSIDE AGENCIES

Mayor Cheng reported that she had attended the Parks and Recreation Committee Meeting and the Environmental Design and Protection Committee Meeting.

8. STAFF REPORTS

8.1 City Manager

8.2 City Attorney

8.2.1 Status Report on the Church of the Redeemer, Magdalena Avenue, Los Altos

City Attorney Mattus reported that there was a community meeting on the proposed project that was attended by Planning Director Cahill. The Negative Declaration is expected to be completed in the near future and subject to comment. The Town has received a request from residents asking that Council consider establishing permit parking on their streets before completion of the improvements. Mattas noted that this is a unique implementation of permitted parking. It is usually used in residential areas surrounding Universities. An ordinance would establish the permit parking and a resolution would identify the area.

Cahill added that Phase III, the request for the proposed Banquet Hall, is expected to be heard by the County Planning Commission in February.

Sandy Mingo, Dawnridge Drive, explained that the residents affected by the proposed meeting/banquet hall would greatly appreciate Council considering taking action on the permitted parking immediately. The parking issue is an on-going problem. They hope that this action will show the County that the proposed parking is inadequate. At this time the plan only calls for an additional 23 parking spaces.

Robert Dowie, resident, explained that the proposal for the project calls for an increase of 300% over previously existing improvements.

MOTION SECONDED AND CARRIED: Moved by Fenwick, seconded by Warshawsky and passed unanimously to direct staff to bring back a draft permit parking ordinance with generic authority within the community and subsequently a supporting resolution that would identify the area.

8.3 City Clerk

8.3.1 Report on Council Correspondence

9. COUNCIL-INITIATED ITEMS

None

10. PRESENTATIONS FROM THE FLOOR

Jim Abraham, Los Altos Hills, thanked City Engineer Mintze Cheng for her service to the Community for the past three years. He has lived in his present house for 25 years and in his opinion, she has achieved more in her tenure than was accomplished in the other 22 years.

Abraham announced that the Emergency Communications Committee will be hosting a presentation of the D-Star radio system at the Los Altos Library, Monday, November 24th and invited interested Council, staff and the public.

Steve Hubbell, Public Education Committee Chair, summarized for Council the student data (property tax revenue and parcel tax revenue) that the Committee has collected. Approximately \$13 million is paid annually by Town residents to the school districts.

Hubbell asked if the Community Relations Committee would be able to assist the Public Education Committee in gathering resident input. Hubbell believes they would be the appropriate vehicle for this phase.

Chris Vargas, Templeton Place, Bullis Charter School Board Member, updated the Council on the progress that has been made by the School. He is very optimistic. They have received excellent community support and hired a national award winning educator to serve as principal for the Charter School. Open enrollment will close on December 13, 2003. The Board has initiated meetings with the Los Altos School District and Vargas is very hopeful that there will be a positive outcome.

Sandy Humphries, 26238 Fremont Road, requested that Council consider agendizing for discussion a conservation easement to be placed over the creek that is next to her

property. She is concerned that a proposal to underground the creek could potentially cause flooding problems and she would lose many of her plantings on the creek.

Humphries also requested that Council consider using rolled curbing on any of their future paving projects. She feels the “industrial curbing” that has been placed on Ascencion Drive does not allow water run-off to flow properly and is a problem for bicyclists and parked cars.

Councilmember Kerr stated that he is going to formally request that review of the creek project be placed on a December City Council agenda.

Jim Abraham, resident, Viscaino Road, explained that the new curb was necessary because his street has been repaved and resurfaced several times and the existing curb had essentially disappeared.

Nancy Couperus, 13680 Page Mill Road, Open Space Committee Chair, participant in the Adobe Creek Watershed collaborative meetings, updated Council on the Adobe Creek project. The group has had three meetings. The last meeting was lead by a facilitator and it had been quite successful. The time frame for completion of the project has been extended to 2-3 years, but the committee recognizes that they are very close to consensus with the SCVWD.

Harry Bahlman, Central Drive, Los Altos Hills Horseman’s Association, reported on the recent successful programs that the group has sponsored, including: trail rides, play days, and the Pony Club Halloween party. He thanked the City Council and staff for their continuing support. Bahlman recently joined the Friends of Westwind Community Barn Board and on their behalf he is requesting that the new path in Byrne Preserve be revisited by Town staff to address continuing water erosion issues. Bahlman offered to work with staff to find a solution

11. PUBLIC HEARINGS

11.1 Review of the Approved Operating and Capital Improvement Program Budgets-Fiscal Year 2003-2004 Post State Budget Adoption (continued from 10-16-03)

Administrative Services Director Sarah Joiner addressed Council. In June, 2003 Council adopted the Operating and Capital Improvement Program Budgets for Fiscal Year 2003-2004 and at that time, directed staff to report back after the State budget adoption with updated estimates and recommendations. Council had before them the budget adjustments as requested. The Finance and Investment Committee reviewed the revisions and recommended that all budget adjustments and recommendations included in the Attachment before Council be approved with the exception of the \$16,000 for the undergrounding phone survey. The Finance Committee wanted more information on this request. Joiner noted that the Committee had met with the City Council on November 17, 2003 and they had received additional information on this item, however, they did not vote on the appropriation.

Joiner explained that the General Fund has approximately \$70,000 more than the earlier budget iteration.

Joiner introduced Craig Jones and Doug Norby, Finance and Investment Committee members.

Craig Jones addressed Council. He explained that the Finance & Investment Committee recommend adopting this budget. The operating expenses of the Town continue to be less than the revenue of the Town and the Town continues to operate at a surplus. If you add capital expenditures to the formula, the Town operates with a slight cash flow negative. This is due to monies expended for street repairs that are necessary to make up for previous years when no work was done. Regarding the telephone survey, Jones noted that it had been discussed by the Committee and by the conclusion of the discussion, there was not a strong opinion of the Committee that it should be excluded.

Doug Norby, addressed Council. He explained that the Committee had not previously approved the telephone survey requested by the Underground Subcommittee due to the lack of supporting information. He agrees that good research information that would be provided by a professional survey is necessary to make an educated decision on the potential Undergrounding project for the Town.

OPENED PUBLIC HEARING
CLOSED PUBLIC HEARING

Mayor Pro Tem O'Malley thanked the Finance and Investment Committee for their review of the budget.

MOTION SECONDED AND CARRIED: Moved by O'Malley, seconded by Kerr and passed unanimously to adopt Resolution 90-01 amending the Operating and Capital Improvement Program Budgets for Fiscal Year 2003-2004 to reflect recommended revisions.

11.2 Consideration of Approval of the New Town Hall Budget (continued from 10-16-03)

Mayor Cheng reported that this item had been discussed at the joint meeting with the City Council and the Finance and Investment Committee (F&I) on November 17, 2003. A donor wall with tiles selling for \$300 and \$500 will be established to solicit donations for the new Town Hall. Council has directed the F&I Committee to investigate financing options for the project and to review similar Town's cash reserves policies to determine what level of reserves is kept, i.e. one year's operating budget. The Committee will report their findings to the Council in January or early February 2004.

OPENED PUBLIC HEARING
CLOSED PUBLIC HEARING

Mayor Pro Tem O'Malley explained that the New Town Hall project budget is \$3,764,924.

MOTION SECONDED AND CARRIED: Moved by Kerr, seconded by Fenwick and passed unanimously to approve the New Town Hall budget of \$3,764,924. and to determine the financing vehicle for the project at a later date.

- 11.3 Request for a Conservation Easement Agreement with exceptions to allow for any structure or use, which would not otherwise violate the provisions of the Zoning Law of the Town, in certain areas of the existing Conservation Easement; Lands of Kerns, 11888 Francemont Drive (Upper Parcel)
(File #130-03-ZP-SD) (Continued 11-06-03)

Planning Director Carl Cahill introduced this item to Council. He proceeded with a power point presentation for background information. The property parcel that is being considered was originally owned by Stephen Gaither. As part of the subdivision in 1989, 12 acres were conveyed to the Town in a conservation easement on 11888 Francemont Drive. Future development of the property was limited to the lower portion of the property and an approximate 1.68 acre site on the ridge top. In August, 2000, after considerable public debate, the City Council granted the applicants' (Lands of Kerns) request for a Site Development permit to construct a new residence on the upper site of the 21 acre property and an exception to allow a driveway to encroach within the conservation easement. In November, 2002, the City Council repealed a previous Council condition that prohibited further subdivision of the property and granted the applicants' (Kerns) request to subdivide their property into two parcels subject to implementing certain conditions and environmental mitigation measures including a requirement that the applicants were to convey a 28,000 square foot conservation easement to the Town on the lower 7.55 gross acre parcel. The land within this easement contains an average slope in excess of 55%, heavy tree coverage and areas of geological instability.

Cahill reviewed the State Subdivision Map Act Section 66474 and pertinent Town General Plan sections with the Council.

Cahill noted that in July, 2003 the applicants submitted an application request to vacate a 19,300 square foot portion of conservation easement west of the new residence and an 8,700 square foot portion along the driveway. Contrary to the applicants claim that their conveyance of the conservation easement for the subdivision obligates the Town to vacate the upper backyard area easement and a portion of the easement, the Town is not obligated. Cahill added that at no time has staff indicated that the conservation easement on the upper property could be successfully vacated at a later date. Upon receipt of the application to adjust the conservation easement boundaries, the Planning Department conferred with the City Attorney's office and determined that state law prohibits the vacation of conservation easements and that such easements must exist in perpetuity. Staff has informed the applicants that their request to vacate is not consistent with state law and the Town's General Plan. The applicants were advised that the Council may authorize exceptions to allow accessory structures in the conservation easement, provided that such exceptions are consistent with the purposes of law. In the past, residents have been permitted to plant vineyards and orchards.

The item before Council this evening is a request for a conservation easement agreement, as proposed by the applicant, that would create a designated “backyard area” in the conservation easement on the upper lot that would prohibit most above ground accessory structures but would permit a gazebo, trellis and radio antenna. The applicant is requesting exceptions to construct in-ground structures such as patio, decks, swimming pool and walkways. The applicant is also requesting approval that would allow grading and retaining walls. The “remaining area” as identified by the applicant would be subject to all standard conservation easement restrictions.

Cahill explained that the applicants’ request is not consistent with the Town’s General Plan and the conservation easement does not constitute a hardship. Cahill added that the granting of this request may prompt future similar requests from property owners that have their properties encumbered by conservation easements. Conservation and open space easements have long been one of the Town’s most effective and immutable tools for maintaining its rural atmosphere and open spaces.

Cahill suggested that if Council chooses to allow exceptions they may be approved for the following reasons: 1) there is some basis in the current Town code to allow accessory structures in a conservation easement; 2) the General Plan allows low intensity private recreation, trails and paths in the Open Space Preserve and Mountain Area south of Moody Road; and 3) staff reports from as early as 1997, indicate the applicants’ intention to vacate a portion of the conservation easement.

Cahill stated that if the Council decides to allow certain accessory structures in the easement, staff recommends at the minimum the following conditions be incorporated into the agreement: 1) the applicants be required to obtain a site development permit and submit detailed architectural and civil drawings for their proposals; 2) any proposed accessory structures shall be subject to the land remaining predominantly in its natural and open space condition; 3) no grading within the conservation easement; 4) no accessory structures shall encroach within the root crowns or drip lines of any heritage oaks; 5) accessory structures shall comply with all setback requirements; and 6) the only accessory structure exceptions permitted would be a gazebo that does not exceed 65 feet in area, a trellis and one crank-up amateur radio antenna.

Cahill updated the Council on the code violation status on the property. He exhibited a slide that showed the grading violation that has occurred on 11888 Francemont. Staff has observed a flat graded pad that appears to be at least 1,000 square feet in area with approximately 6 feet of fill and 2 feet of cut that extends into the existing conservation easement. Grading in conservation easements is generally prohibited. No grading in this area was shown on the approved site development plan and no permit has been issued for this grading. The applicants have been notified to restore the natural grade and revegetate the area. The applicants have requested that restorative grading be deferred pending the Council’s decision this evening.

Councilmember Fenwick requested clarification from staff on the material that he has received from the applicant that appear to include “statements of fact”. Cahill explained that staff had not assured the applicants that they could swap or vacate easements. Cahill noted, however, in early staff reports it had been indicated that vacating the easement

along the ridgeline was not considered to be a problem. Fenwick noted that this was prior to staff learning from the City Attorney that this was prohibited by state law.

Councilmember Warshawsky asked what precedents could be set by granting the applicants request to build accessory structures in the conservation easement and if Council were to approve this request what rationale would support such an action.

Cahill explained that the General Plan does permit low intensity private recreation uses such as trails and pathways. Cahill said staff could support a gazebo in a conservation easement of this size. It is proposed in a location that would not be highly visible from off-site and would not require any grading. Council could set a height restriction to ensure that it would be more easily mitigated.

Councilmember Kerr noted that it has been the Town's policy to permit vineyards and orchards in conservation easements. The land is the Kerns to enjoy as a backyard, the conservation easement just negates the building of accessory structures.

OPENED PUBLIC HEARING

Bill Kerns, 11888 Francemont Drive, addressed Council. He accepted full responsibility for the grading violation and apologized that it was done without a permit. Some of the grading had been called out on the approved site development permit. Kerns explained that the pad had been graded in 2000-2001 during the construction of his home. It was used by the contractor to store vehicles and building supplies. Kerns acknowledged that he did not get a permit for the activity. He would like to keep the existing graded area and feels that restoring it to the original grade could cause erosion and drainage problems for his foundation. Kerns said his home was sited only 2 feet from the conservation easement. He distributed copies of an aerial photo of his home and copies of the Town's Municipal Codes regarding conservation easements and grading permits.

Kerns noted that there is no grant deed nor recorded conservation agreement for his property. The easement is only reflected on the Subdivision's Final Map. He explained that he is seeking a compromise to what he believes was a prior commitment from Staff and Council to allow a swap of conservation easements. He is no longer requesting a permit for a pool or spa and is now seeking permission to build a gazebo, trail paths/walkways, decks, a small amateur radio antenna mast and to plant non-native plants. They would like to do some grading around their home to prevent drainage problems. The applicant reviewed the letter that he had sent to Council and summarized the history of his development and his proposal. He stated that he had repeatedly been assured that he could swap out the conservation easement. Kerns distributed copies of the August 22, 2000 Site Development approval letter for his new residence from the Town and excerpts from staff reports. He referred to Condition of Approval item #20 which stated "A revised conservation easement agreement shall be executed that shows the proposed boundary changes." Kerns said that he would not have sited his home where it is had he not believed that he could exchange conservation easements.

In conclusion, Kerns requested that if Council decides to deny their request for any conservation easement exceptions, he would appreciate Council continuing this item to the next meeting to permit his legal representative to be available.

8:30 p.m.Council Recessed

8:35 p.m.Council Returned to Open Session

OPENED PUBLIC HEARING

Peter Nieh, Bassett Lane, addressed Council. He expressed his concern that a Planning Commissioner has made such a blatant violation of the law by grading in a conservation easement. He believes that Kerns should be held to a higher standard and should be penalized. Nieh voiced his opinion that state laws have been violated and that the applicant will continue to want additional exceptions in the future and approval of their request will set a precedent. He wants to see the graded area returned to its natural state.

Sandra Humphries, Environmental Design and Protection Committee, explained that the Committee always opposes any deviation to restrictions for conservation easements. The areas are to be left as natural as possible to keep ecosystems in place. She shared photos of the property before the Kerns residence had been built on the site.

Chris Vargas, Pathways Committee Chair, encouraged Council to please consider the visibility from the Rhus Ridge trail and to require mitigations for the view. The hike is a wonderful asset and enjoyed by many.

Ray Collins, Open Space Committee Member, reported that the Committee had voted unanimously to oppose any further grading and/or the construction of any accessory structures in the conservation easement. She explained that they are on record opposing any relaxation of conservation easement restrictions. There are two distinct issues at stake: 1) the proposal undermines the legal power and binding intent of a conservation easement which is used by the Town to preserve and protect open space, and 2) this proposal takes advantage of graded land that is in a sensitive part of the easement and allowing the applicant to have exceptions would be rewarding them for the violation.

Dot Schreiner, Saddle Mountain Drive, explained that the Town has very few grant deeds for conservation easements. The Town has relied on the resolutions that approve and authorize the agreements. She reminded Council that the Tract map had a specific condition that it was not sub-dividable and this was overturned by a Council. Now Mr. Kerns is asking Council to uphold something that was never put in writing but alluded too. The applicant was not required to site his home 2 feet from a conservation easement-he chose to build his home there. Schreiner concluded by saying, allowing structures and additional grading in the conservation easement would set a precedent.

Roger Spreen, Open Space Committee, stated that he hoped Council would uphold the value of the conservation easement/open space requirements since the applicant has not proven a hardship and there is no binding agreement for the requested modifications. Spreen noted that some of the proposed amenities would be in the setbacks. The building constraints have been put on the property by the applicant choosing to site his home where he did.

Jim Steiner, Wild Plum Lane, complemented Planning Director Carl Cahill for the outstanding presentation. There has been a consistent progression of negative events on

this subdivision. Steiner would like Council to deny the request and support the Town's codes.

Jim Abraham, Viscaino Road, suggested that Council carefully review the material to see if the applicant had a right to expect he was going to be allowed to modify the easement. If the expectation is there it would be reasonable for Council to allow some minimal work in the area.

Sandra Humphries, Fremont Road, summarized the exceptions that have been permitted on this project, including: the slope of the driveway, quantity of the cut and fill along the driveway, and the lot recorded as not subdividable is now subdivided and for sale.

Bill Kerns, applicant, responded to public comment. He noted that he loves the house where it is sited and will be submitting a landscape plan that will effectively screen the residence; he reiterated his belief that he would be allowed to modify the conservation easement or swap out the easement as defined in Condition #20 of the original site development approval; and he hopes that the City Council will treat their request fairly and permit them to use their backyard for recreational use.

Betty Kerns, applicant, stated that they are not interested in bringing legal action against the Town and regardless of Council's decision this evening on their request, she is on the record stating that they will not move forward with any litigation. She clarified that they had contacted their attorney only after seeing the letter from Peter Neih. Kerns explained that they would not have located the house 2 feet from the conservation easement if they had known they could not modify the easement. In response to a question about the timing of their request, Kerns explained that they had waited to bring this forward after the house was built because they wanted to see how the house fit on the site. They were confident that the City Council would approve their request. Condition #20 is not ambiguous and the Town made a commitment. They had a valid site development permit and a building permit. Kerns would like the Council to honor the commitment.

Nancy Couperus, Open Space Committee member, stated that the members have all visited the Kerns site and at their Committee meeting they voted unanimously to recommend denial of the request and recommend that no accessory structures be permitted in the conservation easement.

CLOSED PUBLIC HEARING

Councilmember Fenwick referenced the August 22, 2003 Site Development approval letter. He asked the City Attorney what is reasonable for the applicant to assume when they receive such a letter from the Town. Mattas responded that the letter was drafted by the Planning Department and the City Attorney does not normally review such letters. The Civil Code, which defines conservation easements, supercedes Town decisions. It is clear that there was discussion about modifying some boundaries, however, it is stated that the exceptions would also be by the decision of the City Council.

Mattas stated that Council may wish to consider, at a minimum, if any of the staff recommended conditions for the conservation easement agreement are acceptable, they are not inconsistent with the purpose of a conservation easement. An agreement is required. At this time, the conservation easement is only identified on the map without any parameters.

Mayor Pro Tem O'Malley stated that the property that was not originally subdividable was subdivided. The applicants should have changed the conservation easement when the lot line was amended. He is amenable to leaving the existing grading and not requiring it be returned to its original condition. For any additional grading required for drainage purposes, the applicants should work with Town staff.

Councilmember Kerr expressed his belief that Betty and Bill's backyard will still be their backyard. The Town has been flexible in the past, allowing the planting of non-natives like orchards and vineyards, but he feels any structures would be unacceptable. This is a very visible, sensitive site next to the Mid-Peninsula Open Space.

Councilmember Warshawsky noted that it is important for the Council to take into consideration input from the neighbors and the public. He views this as a request for a "variance in a conservation easement". He is amenable to having the applicant work with the Town to address drainage concerns. Permeable pathways would be acceptable but he will vote to deny the gazebo and structures.

Councilmember Fenwick stated that it was most likely that he would be expressing a different opinion if the City Attorney and staff had not informed Council that they would be in violation of state law if they permitted the boundary modifications to the conservation easements. The applicants should be able to have confidence in documents they receive from the Town. He realizes that many in the audience are adamantly opposed to the Kerns, but they might feel differently if they read some of the Town documents. He concurs that a swimming pool and gazebo are not appropriate structures in a conservation easement, but there are precedents to putting improvements like vineyards and orchards.

Mayor Cheng remarked that she is very familiar with the history of this project. She was a member of the Planning Commission and later the Council during the reviews. The applicants were misled and believed they could swap easements because it was done before. Cheng agreed that she could not approve the swimming pool or gazebo but what has been approved for other residents, she is willing to do for the Kerns. She concurred that they should work with staff to resolve any drainage issues.

Mayor Cheng asked the Kerns if after hearing the Council's comments, they would like a continuation of the hearing.

Applicant Kerns said Council had been very reasonable. He explained that by code he will have to build stoops from his home into the easement and he would like permission to make this deviation.

City Attorney Steve Mattas explained it would be beneficial for Council to provide direction and the Kerns indicate concurrence to resolve the language for the agreement.

Issues such as walkways and drainage could be considered as part of the landscape plan approval.

Council directed staff to make the following changes to the conservation easement agreement between the Town of Los Altos Hills and the Lands of Kerns:

1) Attachment #1 (staff report) Staff recommended Agreement for Conservation Easement:

Subsection b (6) accessory structures including a gazebo, trellis, and amateur radio antenna/mast shall not be permitted.

- Additional grading to correct any drainage problem may be approved subject to review and approval by the City Engineer. The existing grading can remain and the applicant is not required to restore the area to its original condition.

2) Applicants' proposed Agreement for Conservation Easement:

#7 stepping stones, garden benches, walkways and paths are permitted. No retaining walls, fences or Jacuzzi/hot tub will be permitted.

In addition, Council agreed to the planting of non-native plants adjacent to the driveway and hardscape improvements, no further than 10 feet from the house, will be permitted.

Regarding 11885 Francemont Drive, Council agreed to stepping stones being permitted in the conservation easement.

The applicants, Bill and Betty Kerns agreed to all of the Council's modifications to the agreement.

MOTION SECONDED AND CARRIED: Moved by O'Malley, seconded by Fenwick and passed by the following roll call vote to direct staff to prepare the two revised conservation easement agreements incorporating the changes as directed by the City Council and agreed to on the record by Betty and Bill Kerns and to bring back the agreements for Council approval on the consent calendar at the next City Council Meeting.

AYES: Mayor Cheng, Mayor Pro Tem O'Malley, Councilmember Fenwick, Councilmember Kerr and Councilmember Warshawsky

NOES: None

ABSENT: None

ABSTAIN: None

11.4 Request to Vacate Existing Pathway Easements #1,2,3,4 and Offer to Dedicate Two Pathway Easements; Lands of Kerns, 11885 and 11888 Francemont Drive

Planning Director Carl Cahill explained that Council action was required to adopt the Resolution which would set the public hearing for this item. It was not necessary for Council to discuss the merits of the proposal.

OPENED PUBLIC HEARING

Stephen Bobrichen, Francemont Drive, explained that he had no objections to the applicants' request. However, he wanted to voice his concern about a trail in the open space and the threat of fire. He does not want any recreational trails in the area.

CLOSED PUBLIC HEARING

MOTION SECONDED AND CARRIED: Moved by O'Malley, seconded by Warshawsky and passed unanimously to adopt Resolution #91-03 initiating proceedings and setting a public hearing for December 18, 2003 regarding the vacation of a public pathway and trail easement.

- 11.5 A request for a Conditional Use Permit Amendment for installation of a synthetic turf soccer field and a Site Development Permit for grading (2,000 cubic yards) and drainage improvements: Lands of Pinewood School, 26800 Fremont Road (85-03-ZP-SD-CUP)

Associate Planner Debbie Pedro introduced this item to Council. She explained that Council had before them the Conditional Use Permit Amendment and Site Development Permit for Pinewood School. The applicants are requesting approval of their request to install a new synthetic turf soccer field at the school. The Conditions of Approval require the dedication of a pathway easement on the property between Barron Creek and the fence along the southwest side of the school. The dedication of the pathway easement will ensure that the path, which is an essential link between the neighborhoods, will continue to be accessible to the public. Pedro noted that the applicants are requesting that the school be permitted to keep the pedestrian gates locked during school hours for safety and security concerns.

Pedro explained that the Parks and Recreation Department have been working with the school for a voluntary agreement for shared facilities. This is not a part of the Conditional Use Permit.

Councilmember Kerr requested clarification regarding requiring the Town's use of the facility as a condition of approval for the Conditional Use Permit. City Attorney Steve Mattas explained that there was no nexus for asking for use of the fields.

OPENED PUBLIC HEARING

Scott Riches, President Pinewood School, addressed Council. He offered to answer any questions Council might have regarding the application. He explained that he has been in discussions with Jimmy Forbis, Parks and Recreation Supervisor for the Town, regarding the use of Pinewood's playing fields for three weeks (Monday-Friday) during the summer months.

Riches requested an amendment to Condition #9 that would allow the school to use outdoor sound amplification five times a year. They would like to use this for graduation, their Open House, etc. He noted that their request to keep the gates closed

during school hours was also for the security of the surrounding neighbors, explaining that they have a closed campus policy and do not want students venturing off campus and into the neighborhoods.

Karen Amer, St. Francis Drive, thanked the Council for their consideration of the neighbors concerns about noise from the school.

Chris Vargas, resident, explained that he understood the need for the fence around the private school. Public schools have a sense of community ownership that is not apparent with private schools and they are more likely to be victims of vandalism. Vargas added as Pathways Committee Chair, it is vital to keep this pathway link open and accessible to the public.

CLOSED PUBLIC HEARING

Council was informed that the proposed agreement for the use of Pinewood School's fields would be an exchange for use of the Town's Little League fields.

Council discussed the possible requirement of asking the applicant to mitigate the fence with landscaping. Council determined it was not a viable condition. Riches said that the school would investigate, voluntarily, improving the appearance of the fence.

MOTION SECONDED AND CARRIED: Moved by O'Malley, seconded by Fenwick and passed by the following roll call vote to approve the Site Development Permit and the Conditional Use Permit subject to the recommended conditions of approval (Attachments 1 and 2) with the following modification: the school will be permitted to use outdoor sound amplification a maximum of five times a year during daylight hours not to exceed four hours per event.

AYES: Mayor Cheng, Mayor Pro Tem O'Malley, Councilmember Fenwick,
Councilmember Kerr and Councilmember Warshawsky

NOES: None

ABSENT: None

ABSTAIN: None

Council adjourned to Closed Session at 11:55 p.m.

12. CLOSED SESSION

CLOSED SESSION: CONFERENCE WITH LEGAL COUNSEL – EXISTING
LITIGATION: Government Code Section 54956.9(a): Campbell and Ligeti v. Town of Los Altos Hills

CLOSED SESSION: Pursuant to Government Code Section 54956.8: Conference with
Real Property Negotiator -

Property: – APN 182-19-011

Agency Negotiators: Maureen Cassingham and Mayor Pro Tem O'Malley

Negotiating Parties: Town of Los Altos Hills and Friends of Westwind, Inc.

Under Negotiation: Terms and Conditions related to Lease of Property

CLOSED SESSION: Pursuant to Government Code Section 54956.8: Conference with
Real Property Negotiator -
Property: – APN 175-56-3
Agency Negotiators: Maureen Cassingham and Steve Mattas
Negotiating Parties: Town of Los Altos Hills and Purissima Hills Water District
Under Negotiation: Terms and Conditions related to Lease of Property

The City Council reconvened to the Regular City Council Meeting at 12:45 a.m.

The City Council provided direction to staff and no action was taken.

13. ADJOURNMENT

There being no further business the Regular City Council Meeting of November 20, 2003 was adjourned at 12:47a.m.

Respectfully submitted,

Karen Jost
City Clerk

The minutes of the November 20, 2003 Regular City Council Meeting were approved as amended at the December 4, 2003 Regular City Council Meeting.